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7 IN THE UNITED STATES DISTRICT COURT  
8 FOR THE NORTHERN DISTRICT OF CALIFORNIA

9  
10 UNITED STATES OF AMERICA,

No. CR 09-110 SI

11 Plaintiff,

**ORDER RE VARIOUS PRETRIAL  
MOTIONS**

12 v.

13 AU OPTRONICS CORPORATION, et al.,

14 Defendant.  
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On December 21, 2011, the Court held a hearing on various pretrial motions. All parties were represented by counsel.

**1. Lai-Juh Chen's proposed jury instruction re: liability of superiors**

Plaintiff and defendant Lai-Juh Chen disagree on the appropriate jury instruction governing criminal liability of superiors for acts of subordinates. The Court adopts neither submitted instruction, but will give an instruction which incorporates the instruction approved in *United States v. Brown*, 936 F.2d 1042 (9th Cir. 1991). The Court views the phrase "requires more than purely passive behavior" as explanatory, not as part of the legal standard to be incorporated in the instruction.

1 **2. Plaintiff's motion to exclude expert witness testimony of defense experts Hall, Samuelson**  
2 **and Schmalensee, and defendants' motion to exclude expert witness testimony of plaintiff's**  
3 **expert Leffler**

4 The general *Daubert*/FRE 702 motions to exclude are denied, without prejudice to specific  
5 objections at the time of trial. Each of these witnesses is academically qualified, uses standard economic  
6 analysis and provides some information and opinions which may be relevant to this trial. Should the  
7 testimony become cumulative, prejudicial, factually unsupported, or otherwise inadmissible, appropriate  
8 objections can be made at trial.


9 **3. Plaintiff's motion to compel additional disclosures and exclude testimony of defense expert**  
10 **Deal**

11 Plaintiff seeks to compel defense overcharge expert, Bruce Deal, to disclose more fully the bases  
12 for his opinions. The Court agrees that Mr. Deal's declaration is fairly vague, and frequently cites only  
13 general sources of information. For example, he cites to unspecified data from "comparable" industries,  
14 unspecified public reports and securities filings, and, in some cases, simply to AUO production  
15 generally. This is insufficient information for plaintiff to evaluate Mr. Deal's opinions and prepare for  
16 cross-examination. Accordingly, plaintiff's motion to compel is granted to the extent that Mr. Deal must  
17 identify with specificity the data on which he relies. Once his augmented report is provided to plaintiff,  
18 plaintiff may, if necessary, renew its objections concerning the adequacy of the expression of the  
19 opinions Mr. Deal has prepared, including those related to Dr. Leffler's analysis.

20 However, plaintiff's *Daubert*/702 motion is denied at this time, without prejudice to specific  
21 objections at time of trial.

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23 **IT IS SO ORDERED.**

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25 Dated: December 22, 2011

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28 SUSAN ILLSTON  
United States District Judge